

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**FILED/ACCEPTED**

**JAN 28 2008**

Federal Communications Commission  
Office of the Secretary

In the Matter of )

Petition of Qwest Corporation for Forbearance )  
Pursuant to 47 U.S.C. § 160(c) in the Omaha )  
Metropolitan Statistical Area )

WC Docket No. 04-223

Petitions of Verizon Telephone Companies for )  
Forbearance Pursuant to 47 U.S.C. § 160(c) in )  
the Boston, New York, Philadelphia, Pittsburgh, )  
Providence and Virginia Beach Metropolitan )  
Statistical Areas )

WC Docket No. 06-172

Petition of ACS of Anchorage, Inc. Pursuant to )  
Section 10 of the Communications Act of 1934, )  
as Amended, for Forbearance from Sections )  
251(c)(3) and 252(d)(1) in the Anchorage Study )  
Area )

WC Docket No. 05-281

Petition of ACS of Anchorage, Inc. Pursuant to )  
Section 10 of the Communications Act of 1934, )  
as Amended (47 U.S.C. § 160(c)), for Forbear- )  
ance from Certain Dominant Carrier Regulation )  
of Its Interstate Access Services, and for For- )  
bearance from Title II Regulation of Its Broad- )  
band Services, in the Anchorage, Alaska )  
Incumbent Local Exchange Carrier Study Area )

WC Docket No. 06-109

**COMMENTS ON VERIZON'S MOTION TO MODIFY PROTECTIVE ORDER  
AND CROSS-MOTION FOR RELIEF FROM PROTECTIVE ORDERS**

The undersigned parties ("Commenters"), by their counsel, respectfully submit these comments addressing Verizon's Motion to Modify the Protective Order that was filed in WC Dockets Nos. 04-223 and 06-172 on January 17, 2008 ("Motion"). Verizon asks the Commission

to modify the *Omaha Protective Order*<sup>1</sup> to permit it to access and use confidential information contained in the non-public version of the Commission's *Qwest Omaha Forbearance Order*<sup>2</sup> in its appeal to the United States Court of Appeals for D.C. Circuit of the Commission's *Verizon Six MSA Forbearance Order*.<sup>3</sup> Specifically, Verizon requests the following permission: (i) for its outside appellate and in-house counsel who have signed the *Omaha Protective Order* to obtain and review copies of the complete, unredacted version of the *Qwest Omaha Forbearance Order*; (ii) to provide the court of appeals with that unredacted order; and (iii) to refer to, and quote from, that unredacted order in its submissions to the court of appeals.

For the reasons set forth below, Commenters request that, instead of ruling on Verizon's Motion, the Commission determine (pursuant to paragraph 6 of the *Omaha Protective Order* and 47 C.F.R. § 0.459) that the redacted text in the *Qwest Omaha Forbearance Order* (except for company-specific subscribership numbers) does not require confidential treatment, and release the Order to the public with only minimal redactions as described herein. Because Verizon is not likely to require use of the specific subscribership numbers in its appeal, this relief likely would make Verizon's Motion moot. Commenters also request that the Commission take the same

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<sup>1</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Protective Order, 19 FCC Rcd 11377 (Wireline Comp. Bur. 2004) ("*Omaha Protective Order*").

<sup>2</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415(2005) ("*Qwest Omaha Forbearance Order*"), petition for review dismissed in part and denied in part, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

<sup>3</sup> *Petitions of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212 (rel Dec. 5, 2007) ("*Verizon Six MSA Forbearance Order*"), appeal pending, No. 08-1012 (D.C. Cir. Filed Jan. 14, 2008).

action with respect to the *ACS Anchorage UNE Forbearance Order*<sup>4</sup> and the *ACS Dominance Forbearance Order*.<sup>5</sup> Commenters emphasize that they are requesting only that certain redacted portions of the Commission's decisions in these three cases be declared non-confidential; *not* the underlying data submitted by the parties on which the decisions are based.

### Background

In each of the above-captioned proceedings, as in other forbearance proceedings, the Commission adopted a standard Protective Order at the commencement of the case to enable parties to submit information claimed to be confidential, and to review other parties' confidential submissions, on an expedited basis. In doing so, however, the Commission did not determine that any particular information actually is entitled to confidentiality, and expressly reserved to itself the authority "determine that all or part of the information claimed by the producing party to be confidential is not entitled to such treatment." *See, e.g., Omaha Protective Order*, para. 6. Further, the Commission reserved the power to modify each of its protective orders. *See, e.g., id.*, para. 12.

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<sup>4</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) ("*ACS UNE Forbearance Order*"), *appeals dismissed*, *Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076, 07-71222 (9th Cir. 2007) (dismissing appeals for lack of standing).

<sup>5</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) ("*ACS Dominance Forbearance Order*"), *pets. for recon. pending*.

### Applicable Legal Standard

Section 0.457 of the Commission's rules defines various categories of information that may be withheld from public inspection.<sup>6</sup> The only such category that appears relevant to the forbearance orders is § 0.457(d), "Trade secrets and commercial or financial information obtained from any person and privileged or confidential—... 5 U.S.C. 552(b)(4) and 18 U.S.C. 1905."

The issue in this case is not the confidentiality of the information submitted by the participants to the Commission, but rather the confidentiality of the text of the Commission's decisions in each of these cases, and of the facts on which the Commission based those decisions. The Commission, using an appropriate degree of caution, designated as "confidential information" certain portions of its orders that were based on information submitted by particular parties for the record with a claim of confidentiality. However, the Commission has not yet determined whether any information is actually entitled to confidentiality under applicable legal standards.

In determining whether to release the contents of the Orders to the public, the Commission should apply the standards developed by the courts to implement 5 U.S.C. § 552(b)(4). This exemption from the Freedom of Information Act ("FOIA"), as reflected in Commission Rule § 0.457(d), covers information that is a) commercial or financial, and b) obtained from a person, and c) privileged or confidential.<sup>7</sup> The terms "commercial or financial" and "obtained from a

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<sup>6</sup> 47 C.F.R. § 0.457.

<sup>7</sup> The exception also encompasses "trade secrets," but this term is narrowly defined to cover techniques used in the production of goods or services, and does not apply to the purely financial and statistical information contained in the forbearance orders. *Public Citizen Health Research Group v FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983); *accord, Anderson v. HHS*, 907 F.2d 936, 944 (10th Cir. 1990).

person” are given broad interpretation, and Commenters are willing to assume that (1) all of the redacted information in the Orders is “commercial or financial” and (2) the underlying data on which the Commission relied was obtained from one or more persons.

The pivotal question then is whether the information contained in the Orders is “confidential.”<sup>8</sup> The leading case on what constitutes “confidential” information, when the information submitted is “required” to be furnished, is *National Parks & Conservation Ass'n v Morton*, 498 F.2d 765 (D.C. Cir. 1974). In *National Parks*, the Court of Appeals for the District of Columbia Circuit held that the test for confidentiality is objective and the term “confidential” should be interpreted to protect the balance between the right to information under FOIA and governmental and private interests in accordance with the following two-part test:

commercial or financial matter is “confidential” for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.<sup>9</sup>

A less stringent test applies to information that was submitted voluntarily to a government agency. *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (*en banc*). However, a submission is not “voluntary” if it is compelled by the agency or required by agency rules. In these cases, although the petitioners (Qwest and ACS) voluntarily sought forbearance relief from the Commission, the statute and Commission precedent required the petitioners to

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<sup>8</sup> The exception also encompasses “privileged” information, but this refers to evidentiary privileges such as the attorney-client or doctor-patient privileges, and does not apply in this case. *McDonnell Douglas Corp. v EEOC*, 922 F. Supp. 235 (E.D. Mo. 1996), *appeal dismissed*, No. 96-2662 (8th Cir. Aug. 29, 1996); *Washington Post Co. v HHS*, 690 F.2d 252, 267 n.50 (D.C. Cir. 1982).

<sup>9</sup> 498 F.2d at 770.

provide factual documentation to support those petitions.<sup>10</sup> A party does not have the option of petitioning for forbearance and then declining to meet its burden of proof under Section 10(a) of the Communications Act on the ground that the information needed to meet that burden is confidential.

Likewise, because the confidential information submitted in these proceedings by the cable operators was not offered on those companies' own initiative, but was provided in response to requests for information from Wireline Competition Bureau staff or the Competitive Policy Division,<sup>11</sup> such information is deemed "required" information. Courts have found that responses to agency requests for information objectively constitute "required" information. *See In Defense of Animals v. HHS*, No. 99-3024, 2001 U.S. Dist. LEXIS 24975 at \*32 (D.D.C. Sept. 28, 2001). Courts will not look at the subjective intent of an agency in making the request, but rather, if the

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<sup>10</sup> *See Judicial Watch, Inc. v Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 28 (D.D.C. 2000) ("when the government requires a private party to submit information as a condition of doing business with the government" the submission is deemed "required"); *Lepelletier v FDIC*, 977 F. Supp. 456, 460 n.3 (D.D.C. 1997) ("Information is considered 'required' if any legal authority compels its submission, including informal mandates that call for the submission of the information as a condition of doing business with the government"), *aff'd in part, rev'd in part & remanded on other grounds*, 164 F.3d 37 (D.C. Cir. 1999); *Lykes Bros. S.S. Co. v Peña*, No. 92-2780, slip op. at 8-11 (D.D.C. Sept. 2, 1993) (submission was "compelled" both by agency statute and by agency letter sent to submitters); *Lee v. FDIC*, 923 F. Supp. 451, 454 (S.D.N.Y. 1996) (rejecting agency's attempt to characterize submission as "voluntary" when documents were "required to be submitted" in order to obtain government approval to merge two banks).

<sup>11</sup> *See, e.g.*, Letter from J.G. Harrington, Counsel for Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-223 (June 30, 2005) (stating that Cox was submitting "responses to certain questions from Commission's staff"); Letter from John Nakahata *et al.*, Counsel for General Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-281 (Oct. 24, 2006) (providing updated information "[p]ursuant to the request of the Competition Policy Division of the Wireline Competition Bureau"); Letter from John Nakahata *et al.*, Counsel for General Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-109 (July 12, 2007) (stating "[p]ursuant to the request from the Competition Policy Division of the Wireline Competition Bureau," GCI was submitting documents that it "submitted previously in WC Docket No. 05-281").

agency has the legal authority to compel the requested information, the submission of information following a request for such information will be deemed required.<sup>12</sup> Here, the Commission plainly has authority under Section 218 of the Communications Act,<sup>13</sup> among other provisions, to require telecommunications carriers and their affiliates to provide relevant information, and so information submitted by such persons in response to Commission requests cannot be considered voluntary.<sup>14</sup> Moreover, because the *Omaha Forbearance Order* was based on the information Cox provided and the *ACS UNE Forbearance Order* and *ACS Dominance Forbearance Order* were based on the information GCI provided, it is indisputable that the Commission required the submission of this information so that it could issue its decision.

**Many Redacted Portions of the Orders Do Not Constitute "Confidential Information"**

**1. The Qwest Omaha Forbearance Order**

The redacted information in the *Qwest Omaha Forbearance Order* falls generally into three categories – first, broad comparisons of companies' market shares; second, information about Cox facilities coverage in Qwest wire centers; and third, specific numbers of lines or other services provided by particular companies to customers in the Omaha MSA. Commenters submit that only the third category of information is entitled to be protected from public disclosure under 5 U.S.C. § 552(b)(4).<sup>15</sup>

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<sup>12</sup> *Id.* at \*35.

<sup>13</sup> 47 U.S.C. § 218.

<sup>14</sup> Even if the Commission views the Bureau's data requests as informal, they still can be deemed required. *See Lepelletier*, 977 F. Supp. at n.3 ("Information is considered 'required' if any legal authority compels its submission, including informal mandates").

<sup>15</sup> Even customer line counts are not entitled to confidentiality forever. Commenters are prepared to assume for purposes of this motion that Qwest and Cox could suffer "substantial harm to [their] competitive position[s]" if the precise numbers of customers they provide particular services to in Omaha were made public today. However, the information in the Order

The first category includes many passages in the Order in which the Commission compared the market shares of Qwest and Cox without referring to specific market share data, or by referring to (usually rounded-off) market share percentages. This includes passages in paragraphs 25, 28 (first redacted item in body; and note 79, first redacted item), 29, 30 (first, second, and fourth redacted items), 39, 47, 49 (first redacted item), 64 (note 167), 66 (body, and note 174, first redacted item), 67 (note 177), 69 (last redacted item), 78, and 85. These passages arguably do not constitute "confidential information ... obtained from a person" at all, because they are the result of calculations performed by Commission staff, and do not directly disclose any specific information supplied to the Commission by a person. Nor is it possible to infer any individual company's confidential data from the very high-level results provided in these passages. Even knowing Company X's market share in a particular region to the exact percentage point does not, without other information obtained from another source, permit anyone to determine Company X's revenues, volume of sales, or other confidential financial data. Further, most of the redacted passages identified above are not that specific; they only state that one company's market share is "larger" or "much larger" than another's, or use similarly general descriptive terms.

Disclosure of this category of information does not fall within either of the two *National Parks* exemption criteria. First, disclosure will not impair the ability of the Commission to obtain reliable information from parties in future cases. Forbearance petitioners will have an incentive to provide reliable and complete information in order to satisfy their burden of proof. Other

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relates to services provided in late 2004 and early 2005. Even now, the competitive value of this information would be diluted by the passage of time, since the figures generated in 2004-05 cannot be accurate today. After a few more years, the balance of interests will tilt in favor of disclosure, since it is difficult to imagine how any company could suffer substantial harm from disclosure of what its revenues or line counts were five or ten years earlier.



parties are unlikely to be deterred from responding to mandatory Commission requests for information simply because of the possibility that the Commission may make public some very general, high-level characterizations of their relative market share in particular regions. Second, disclosure will not cause substantial harm to the competitive position of the person from whom the information was obtained. The information contained in the identified passages is simply too general and too derivative to permit any other person to take competitive advantage of the data. After all, both Qwest and Cox undoubtedly have a fairly good idea of their respective market shares in Omaha without having to refer to the information submitted by the other to the Commission, and it is common knowledge that these two companies control the overwhelming majority of the local telephone service market in Omaha. No third party would gain any practical advantage by knowing precisely how the market share is divided between the two of them, especially since the market share information in the Commission's Order is MSA-wide and does not permit any potential entrant to target specific sub-areas within the Omaha market.

The second category includes passages in which the Commission states the number of wire centers in which Cox provides certain services or has certain levels of facilities coverage, without identifying which specific wire centers comprise the group. These passages are in paragraphs 60, 66 (note 174), and 69 (next-to-last redacted item).<sup>16</sup> This information is essentially useless to any other person for competitive purposes because it does not identify which

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<sup>16</sup> Cox has waived its confidentiality claims to other information of this type, which the Commission previously has released to the public. See *Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting Qwest Corporation Forbearance Relief in the Omaha Metropolitan Statistical Area*, WC Docket 04-223, Public Notice, 22 FCC Rcd 13561 (2007) (disclosing, after receiving Cox's consent, that Qwest was granted unbundling relief in those wire center service areas where, among other things, Cox's voice-enabled cable plant covered more than 75% of the end-user locations that were accessible from those wire centers).

particular wire centers fall into any specified grouping. For this reason, the wire center information cannot satisfy either prong of the *National Parks* test.

## 2. The Anchorage UNE Forbearance Order

Similar to the *Qwest Omaha Forbearance Order*, the redacted information in the *ACS UNE Forbearance Order* falls generally into three categories – first, broad comparisons of companies' market shares; second, information about GCI's facilities coverage in ACS wire centers; and third, specific numbers of lines or other services provided by particular companies to customers or sensitive information relating to a company's current and future business operations, including those that concern particular wire centers or services obtained from another carrier in the Anchorage study area. Consistent with the discussion in the preceding section, only the third category of information is entitled to be protected from public disclosure under 5 U.S.C. § 552(b)(4).<sup>17</sup>

The first category again includes many passages in the Order in which the Commission compared the market shares of ACS and GCI without referring to specific market share data, or by referring to (usually rounded-off) market share percentages. This includes passages in paragraphs 28 (first and second redacted items), and 33 (note 102, second redacted item). As discussed above, disclosure of this category of information does not fall within either of the two *National Parks* exemption criteria. Moreover, although the redacted item in footnote 83 does not include market data, it does not warrant confidential treatment because it is a general statement that is by no means sensitive.

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<sup>17</sup> As noted above, customer line counts are not entitled to confidentiality forever; however, Commenters are prepared to assume for purposes of this motion that ACS and GCI could suffer "substantial harm to [their] competitive position[s]" if the precise numbers of customers they provide particular services to in Anchorage were made public today.

The second category includes passages in which the Commission states the number of wire centers in which GCI provides certain services or has certain levels of facilities coverage, without identifying which specific wire centers comprise the group. These passages are in paragraphs 33 (note 102, first redacted item) and 36 (note 114 all redacted items, note 120 all redacted items, and note 121 first redacted item).<sup>18</sup> This information is essentially useless to any other person for competitive purposes because it does not identify which particular wire centers fall into any specified grouping. For this reason, the wire center information cannot satisfy either prong of the *National Parks* test.

### 3. The Anchorage Dominance Forbearance Order

In the *ACS Dominance Forbearance Order*, the redacted information falls generally into the categories noted above.<sup>19</sup> The first category includes passages in paragraphs 39 (second redacted item), 43 (third redacted item), 47 (and note 133) and 79. As discussed above, disclosure of this category of information does not fall within either of the two *National Parks* exemption criteria. The second category, which includes paragraph 52 (and note 144), is essentially useless to any other person for competitive purposes and only the third category of information is

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<sup>18</sup> GCI has waived its confidentiality claims to other information of this type, which the Commission previously has released to the public. See *Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting ACS of Anchorage, Inc. Forbearance Relief in the Anchorage, Alaska Study Area*, WC Docket No. 05-281, Public Notice, 22 FCC Rcd 11962 (2007) (disclosing, after receiving GCI's consent, that ACS was granted unbundling relief in those wire center service areas where, among other things, GCI's voice-enabled cable plant covered more than 75% of the end-user locations that were accessible from those wire centers).

<sup>19</sup> Commenters do not have a copy of the confidential version of the *ACS Dominance Forbearance Order* and have identified information that apparently should be redacted based on the public version of the Order. Other portions of the confidential version of this Order may warrant declassification if they fall into the first two categories.

entitled to be protected from public disclosure under 5 U.S.C. § 552(b)(4), at least for a reasonable period of time.

### **Alternative Request for Relief**

In the alternative, if the Commission does grant Verizon's Motion, the Commission should not grant it for Verizon only. In particular, other parties participating in the D.C. Circuit Court proceeding, *i.e.*, No. 08-1012,<sup>20</sup> that is addressing Verizon's appeal of the *Verizon Six MSA Forbearance Order* should also have permission for their outside appellate and in-house counsel who have signed the *Omaha Protective Order* to obtain and review copies of the complete, unredacted version of the *Qwest Omaha Forbearance Order*; to provide the court of appeals with that unredacted order; and to refer to, and quote from, that unredacted order in its submissions to the court of appeals.<sup>21</sup> It is only fair and proper that all parties involved the appeal have the same rights as Verizon regarding the use of the unredacted version of the *Qwest Omaha Forbearance Order*.

In addition, to the extent the Commission grants Verizon's Motion, the Commission should modify the *Anchorage UNE Protective Order*<sup>22</sup> and *Anchorage Dominant Carrier*

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<sup>20</sup> Commenters intend to file Motions to Intervene in this appeal with the Court of Appeals.

<sup>21</sup> Parties participating the appeal would of course have the same obligation as Verizon to file any submissions that contain unredacted information under seal pursuant to the same procedures used by the court to protect that information in the court proceedings on the *Qwest Omaha Forbearance Order*. See Verizon Motion at 2.

<sup>22</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, Protective Order, 20 FCC Rcd 16310, ¶ 12 (Wireline Comp. Bur. October 14, 2005) ("*Anchorage Dominant Carrier Protective Order*") ("Nothing in this order shall prevent any party or other person from seeking modification of this order.").

*Protective Order*<sup>23</sup> in similar fashion so that parties opposing Verizon's appeal of the *Verizon Six MSA Forbearance Order* can access and use confidential information contained in the unredacted version of the *ACS UNE Forbearance Order* and *ACS Dominance Forbearance Order* in submissions that are filed under seal with the Court. While Verizon contends the Commission unlawfully departed from the analytical framework *Qwest Omaha Forbearance Order* in issuing its *Verizon Six MSA Forbearance Order* and that the redacted version of the *Qwest Omaha Forbearance Order* does not adequately disclose the analytical framework for it to make its case with the court of appeals, Verizon conspicuously ignores the fact that the Commission expressly stated that its *Verizon Six MSA Order* follows the precedent established not only in the *Omaha Forbearance Order*, but also in the *ACS UNE Forbearance Order* and *ACS Dominance Forbearance Order*.<sup>24</sup> For this reason, any court considering Verizon's appeal should be able to see all the details of this precedent. This would include the unredacted analytical framework and market share information upon which these latter two orders were based. In demonstrating that

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<sup>23</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended (47 U.S.C. 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket 06-109, *Protective Order*, 21 FCC Rcd 6560, ¶ 12 (Wireline Comp. Bur. June 12, 2006) ("*Anchorage UNE Protective Order*") ("Nothing in this order shall prevent any party or other person from seeking modification of this order").

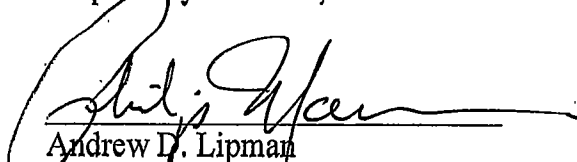
<sup>24</sup> See *Six MSA Forbearance Order*, ¶ 20 ("The Commission previously has evaluated requests for relief similar to that sought by Verizon in the *Qwest Omaha Forbearance Order*, the *ACS UNE Forbearance Order*, and the *ACS Dominance Forbearance Order*, and the analytical framework established in that precedent guides our actions here."), ¶ 36 ("We continue to follow the approach that the Commission adopted in the in the *Qwest Omaha Forbearance Order* and *ACS UNE Forbearance Order* for determining whether forbearance from unbundling obligations is warranted under the section 10 criteria....[T]he record evidence in this proceeding demonstrates that Verizon is not subject to a sufficient level of facilities-based competition in the 6 MSAs to grant relief under the Commission's *Qwest Omaha* and *ACS UNE* precedent, and we thus deny the Verizon Petitions with respect to the request for forbearance from UNE obligations the 6 MSAs at issue in this proceeding.").

the Commission's *Verizon Six MSA Order* does not unlawfully depart from this existing precedent, parties involved in the appeal should also have the right to cite and discuss the unredacted aspects of these two orders in their sealed submissions to the Court.

### **Conclusion**

For the foregoing reasons, the Commission should determine that the information contained in the unredacted versions of its forbearance decisions involving the Omaha and Anchorage markets does not require confidentiality, except for company-specific subscribership numbers, and should release all three of those orders to the public with substantially limited redactions. Alternatively, if the Commission chooses to maintain confidentiality of these documents, it should modify the protective orders in all three proceedings to permit all parties to an appeal, not just Verizon, to quote from and rely upon the unredacted orders subject to the conditions proposed by Verizon in its Motion.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of January, 2008, I caused copies of the foregoing Comments on Verizon's Motion to Modify the Protective Order and Cross-Motion for Relief from Protective Orders to be served upon each of the following by first-class mail, postage prepaid:

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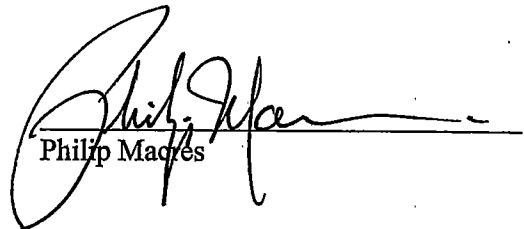
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